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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
WILLIS, MICHAEL A	

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 03/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/648,376	CANNELL ET AL.	
	Examiner	Art Unit	
	Michael A. Willis	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 December 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-52* is/are pending in the application.

4a) Of the above claim(s) *4 and 27-49* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5-26 and 50-52* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claims 1-52 are pending. Claims 27-49 are withdrawn from consideration as directed to a non-elected invention. Claim 4 is withdrawn from consideration as directed to a non-elected species. Claims 1-3, 5-26, and 50-52 are examined.

Election/Restrictions

1. Applicant's election with traverse of claims 1-26 and 50-52 in Paper No. 7, submitted 18 December 2001, is acknowledged. The traversal is on the grounds that the examiner has not shown that examining Group I together with Group II would constitute a serious burden because the groups are classified in the same class and subclass. This is not found persuasive because the search is not limited to the patent literature. It is the position of the examiner that the search for the two groups is not co-extensive, particularly with respect to the non-patent literature for reasons as stated in a previous Office Action.

2. Applicant further traverses the election of species requirement on the grounds that the examiner has not shown that there would be a serious burden to examine all of the claimed species. This is not found persuasive because the number of species encompassed by ceramides, cationic polymers, and amphoteric polymers and the possible combinations of the three groups is very large, thus constituting a serious burden on the examiner.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 8, 9, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 8 is rejected for being confusing for listing the same compound twice. The compounds N-oleoyldihydrosphingosine and 2-oleamido-1,3-octadecanediol appear to be the same compound. Clarification is requested.

6. Claim 25 is rejected for being vague due to the phrase "protein derivatives". The specification does not provide a basis for determining the metes and bounds of the phrase, so that one of ordinary skill in the art would not be apprised of the scope of the claim.

7. Any remaining claims are rejected for depending from an indefinite base claim.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 50-52 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Laurent et al (WO 97/15271) as understood by the English language equivalent (US

Pat. 6,251,378). Laurent discloses a composition and method for oxidation dyeing of keratin fibers. Laurent discloses that a subject of the invention is a multi-compartment kit, a first compartment of which contains a dye composition, and a second compartment which contains the oxidizing composition (see col. 8, lines 49-58). Example 2 is comprised of N-oleoyldihydrosphingosine, also known as 2-oleamido-1,3-octadecanediol, and hexadimethrine chloride as part of the common dye support (see col. 9, lines 1-35).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 1-3, 5-26 and 50-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laurent et al (WO 97/15271) as understood by the English language equivalent (US Pat. 6,251,378) in view of Cauwet et al (US Pat. 5,656,258).

13. Laurent teaches a composition and method for oxidation dyeing of keratin fibers. The compositions contain a ceramide represented by formula II (see col. 2, line 65 through col. 4, line 43). N-oleoyldihydrosphingosine is specifically taught (see col. 4, line 15). Weight percentages are taught (see col. 6, lines 59-63). Laurent teaches that the compositions used in the invention can contain various adjuvants conventionally used in compositions for dyeing hair, including cationic or amphoteric polymers or mixtures thereof (see col. 8, lines 1-11).Laurent further teaches that a subject of the invention is a multi-compartment kit, a first compartment of which contains a dye composition, and a second compartment which contains the oxidizing composition (see col. 8, lines 49-58). Laurent teaches that the composition can be in any form of liquid or gel which is suitable for dying hair (see col. 8, lines 41-45). Example 2 is comprised of N-oleoyldihydrosphingosine, also known as 2-oleamido-1,3-octadecanediol, and the cationic polymer hexadimethrine chloride as part of a common dye support (see col. 9, lines 1-35). The reference lacks polyquaternium-22, also known as MERQUAT 280.

14. Cauwet teaches cosmetic compositions containing a mixture of conditioning polymers. The compositions improve the disentanglement of hair as well as the softness of the hair (see abstract). Cauwet teaches a synergistic effect from the combination of polymers (a) and (b) (see col. 1, lines 49-53; and col. 2, lines 1-65). A preferred polymer (a) corresponds to hexadimethrine chloride (see col. 3, line14-16). A particularly

preferred polymer (b) corresponds to MERQUAT 280 (see col. 3, lines 20-29). Cauwet teaches the use of the compositions for permanent waving, dyeing or bleaching (see col. 6, lines 10-28). Weight percentages are taught (see col. 3, lines 33-38).

15. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the compositions of Laurent by the addition of MERQUAT 280 in order to benefit from the synergistic effect of the combined polymers for improving the disentanglement of hair as well as the softness as taught by Cauwet.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael A. Willis whose telephone number is (703) 305-1679. The examiner can normally be reached on Mon. to Fri. from 9 a.m. to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie can be reached on (703) 308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

Michael A. Willis
Examiner
Art Unit 1617

February 25, 2002

MICHAEL G. HARTLEY
PRIMARY EXAMINER